might, by extending a spur an unreasonable distance to serve a small community, throw a burden upon the others which they would consider to be unfair. Whether the question were raised in court by an aggrieved member of the public under a statutory right, or before the commission in the absence of such right, its determination would appear to depend upon the degree of unfairness worked by the uniform rate, in the absence of a clear legislative declaration that the individual city should be the unit for fixing the rate. The majority of the court in the principal case held the individual city should be the unit, in the absence of legislative declaration to the contrary.

SALES—BARTER AND EXCHANGE HELD SYNONYMOUS WITH SALE.—The defendant demurred to an indictment charging the "sale, barter and exchange" of intoxicating liquor, on the grounds of duplicity. *Held*, that a barter and exchange was a sale. *Young v. State* (Texas, 1922), 243 S. W. 472.

In construing statutes prohibiting the "sale" of intoxicating liquors, the decisions of the courts are irreconcilable. On the one side it is held that a transfer of liquor for a promise to return a like kind and quantity of liquor is not a "sale" within the meaning of the statute prohibiting such "sales." *Gillan v. State*, 47 Ark. 555; *Jones v. State*, 108 Miss. 530; *Coker v. State*, 91 Ala. 92. The courts which hold that a "barter and exchange" is a "sale" within the meaning of the statute all presume an intent on the part of the legislature to prohibit the disposal of liquors, either by sale or barter. *State v. Mary Teahan*, 50 Conn. 92; *Com. v. Abrams*, 150 Mass. 393; *Keaton v. State* (Texas, 1896), 38 S. W. 522. Benjamin defines a "sale" as the transfer of goods from one man to another for a price in money; and a barter as a transfer of goods for goods. BENJ. ON SALES, Ed. 7, p. 2. Accord, STORY ON SALES, Ed. 4, p. 199. But Blackstone says, "a sale or exchange is a transmutation of property from one man to another, in consideration of some price or recompense in value." BL. COMM., Bk. II, p. 446. The courts are agreed that a transfer of goods for a pecuniary consideration is a "sale." *Koehler v. St. Mary's Brew. Co.*, 228 Pa. 648; *U. S. v. Ash*, 75 Fed. 651; *DeBary v. Dunne*, 172 Fed. 940. And it has been held that proof of an exchange of goods will not support an averment of a "sale" of these goods. *Vail v. Strong*, 10 Vt. 457; *Stevenson v. State*, 65 Ind. 409. It is also generally agreed that if the goods transferred are estimated in terms of money, then such transfer will constitute a "sale." *Brunsvold v. Medgorden* (Iowa, 1915), 153 N. W. 163; *Boardman Co. v. Petch* (Cal., 1921), 199 Pac. 1047. But according to *Gunter v. Leckey*, 30 Ala. 591, a transfer of part goods and part money for other goods is not a "sale" when such other goods are not estimated in terms of money. For further discussion of this topic, see 20 MICH. L. REV. 362.

SALES—PASSAGE OF TITLE TO GOODS NOT IDENTIFIED AT TIME OF CONTRACT. —The petitioners contracted with a broker for the purchase of bonds, paying in advance the estimated purchase price. After acquiring the bonds the broker was to forward them by mail, but before doing so he was declared

a bankrupt. He had, however, acquired the greater portion of the bonds and had placed them in an envelope marked with the name of the petitioners. *Held,* the buyer acquired title to the bonds. *Hopkins et al. v. Bronaugh* (Oregon, 1922), 281 Fed. 799.

When did title in the bonds pass to the buyer? It may be, as the facts of the case indicate, that the seller intended title to pass at the time he placed the bonds in an envelope marked with the name of the buyer; but if this intent is prevailing and the title is held to have passed at that time, what is to be said with regard to the buyer's consent to the appropriation? In the sale of unidentified goods, the assent of the buyer is essential. *Atkinson v. Bell,* 8 Barn. & Cress. 277; *Mucklow v. Mangles,* 1 Tau. 318; *Andrews v. Cheney,* 62 N. H. 404. This proposition is not denied in *Langton v. Higgins,* 4 H. & N. 402, in which case it was held that title to oil passed to the buyer when it was put into the buyer's bottles. In rendering its decision the court says: "The buyer in effect says, 'I will trust you to deliver into my bottles and by that means to appropriate to me the articles which I have bought of you.'" It would thus seem that the case was decided on the theory that the buyer may appoint the seller his agent to assent to the appropriation when made. In *Aldridge v. Johnson,* 7 E. & B. 885, title to barley was held to have passed to the buyer, the court stating: "Looking to all that was done, when the bankrupt put the barley into the buyer's sacks, *eo instantia,* the property in each sackful vested in the plaintiff. I consider that here was *a priori* an assent by the plaintiff. He had inspected and approved of the barley in bulk. He sent his sacks to be filled out of that bulk. There can be no doubt of his assent to the appropriation of such bulk as should have been put into the sacks." It is thus clear that these cases do not stand for the proposition that assent in executory contracts is not necessary, but such assent is found possibly by agency in the one case and *a priori* in the other. In the instant case sufficient facts do not appear to justify the conclusion that there was assent to the appropriation either in advance or by agency. The case is not as strong a one on its face as *Jenner v. Smith,* 4 C. Pl. 270, or *Andrews v. Cheney,* 62 N. H. 404, in neither of which cases did the court find an assent by the buyer. The court does not give the basis for its decision in the present case. If it is meant to stand for the proposition that assent of the buyer is not necessary, it would seem to run counter to the many decisions cited. An interesting question arises as to those cases in which delivery is made to a carrier. The question of assent is not discussed in these cases, but it is uniformly held that upon delivery being made to a carrier, unless a contrary intent is shown, title passes to the buyer. *Smith v. Edwards,* 156 Mass. 221; *Pullman's Palace Car Co. v. Metropolitan St. Ry. Co.,* 157 U. S. 94; *Capehart v. Furman Farm Improvement Co.,* 103 Ala. 671. These cases either stand for the proposition that in executory contracts assent of the buyer is not necessary (and they have some support for this in the *dictum* of *Smith v. Edwards,* 156 Mass. 221), or else there is something about this type of case that distinguishes it from the other cases where delivery to the carrier is not involved. Whatever this distinction may be, the courts have not discussed the matter.